

# **Handbook and Code of Conduct for Board Members**

July 2017

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## Section 1: Duties

### 1.1 About Phone-paid Services Authority

Phone-paid Services Authority is the UK's independent regulator for content, goods and services charged to a phone bill. This includes TV voting lines, competitions, adult entertainment, chat lines, business information services, gambling, technical helplines, game downloads, directory enquiries, and charity text giving. In law these are called Premium Rate Services (PRS), but we know that for many consumers the term is not well understood. Instead we aim to use terminology that everyone can recognise.

As a regulator our role is to make sure that consumers are fully protected when paying for content, goods and services through their phone bill. We do this by upholding the standards we set through our Code of Practice, and by eradicating scams and sharp practices in the market.

For clarity, it is not our role to get refunds for individual consumers (other organisations provide dispute resolution between consumers and providers), although this may happen as a consequence of any investigations we undertake and in particular as a result of decisions made by our independent Code Adjudication Tribunal.

#### **Our vision:**

Our vision is a healthy and innovative market in which consumers can charge content, goods and services to their phone bill with confidence.

#### **Our mission:**

Our mission is twofold:

- To protect consumers from harm in this market, including where necessary through robust enforcement of our Code of Practice;
- To further their interests through encouraging competition, innovation and growth in the market.

#### **1.1.1 We will seek to do this through:**

- Providing clarity about the market for content, goods and services charged to a phone bill:
  - Helping consumers to understand how purchases can be made to a phone bill, and how they can do so with confidence;
  - Setting out our role as a regulator, and directing consumers to those who can help with their enquires;
  - Explaining how consumers can get redress if things have gone wrong;
  - Working with industry, consumer and Alternative Dispute Resolution bodies to improve every part of the consumer experience;

### 1.1.2 Applying an outcomes-based Code of Practice:

- Building on industry-wide consultation and securing required approval from Ofcom;
- Supporting with clear guidance and compliance advice;
- Developing new Code versions to best address identified issues and opportunities;
- Achieving recognition for being fair and proportionate;

### 1.1.3 Delivering a balanced approach to regulation:

- Applying informal and policy-based solutions as well as robust formal enforcement activity;
- Enhancing our market and consumer behaviour knowledge, and identifying emerging trends;
- Engaging positively and constructively with industry, both collectively and with individual organisations;

### 1.1.4 Working in partnership with Government and other regulators:

- Establishing regulatory clarity where there is overlap both in terms of (a) content, goods and services; and (b) payment mechanism;
- Identifying relevant regulatory issues and influencing their potential impact on the market.

### 1.1.5 As a public body, we will underpin the delivery of our mission through:

- Delivering high standards of organisational support
- Maintaining our commitment to the principles of good governance;
- Ensuring our business systems are appropriate and fit for purpose;
- Managing our finances in line with our regulatory remit and market context;
- Developing and rewarding a highly motivated workforce;
- Providing responsive and accurate legal guidance.

### Our core values:

We continue to adhere to the principles of good regulatory practice. In addition, our core values and behaviours underpin everything we do to deliver our mission:

#### **Right touch**

- **Fair and proportionate**

Be fair reasonable and well-informed.

Ensure our actions support good regulatory outcomes for all stakeholders and give certainty and confidence.

- **Aware of the bigger picture**

Anticipate developments that may affect us and those around us.

Be curious and inquisitive, ask questions and challenge assumptions. Be flexible and enabling of responsible innovation.

Plan for the future and think of the impact of our work.

### Collaborative

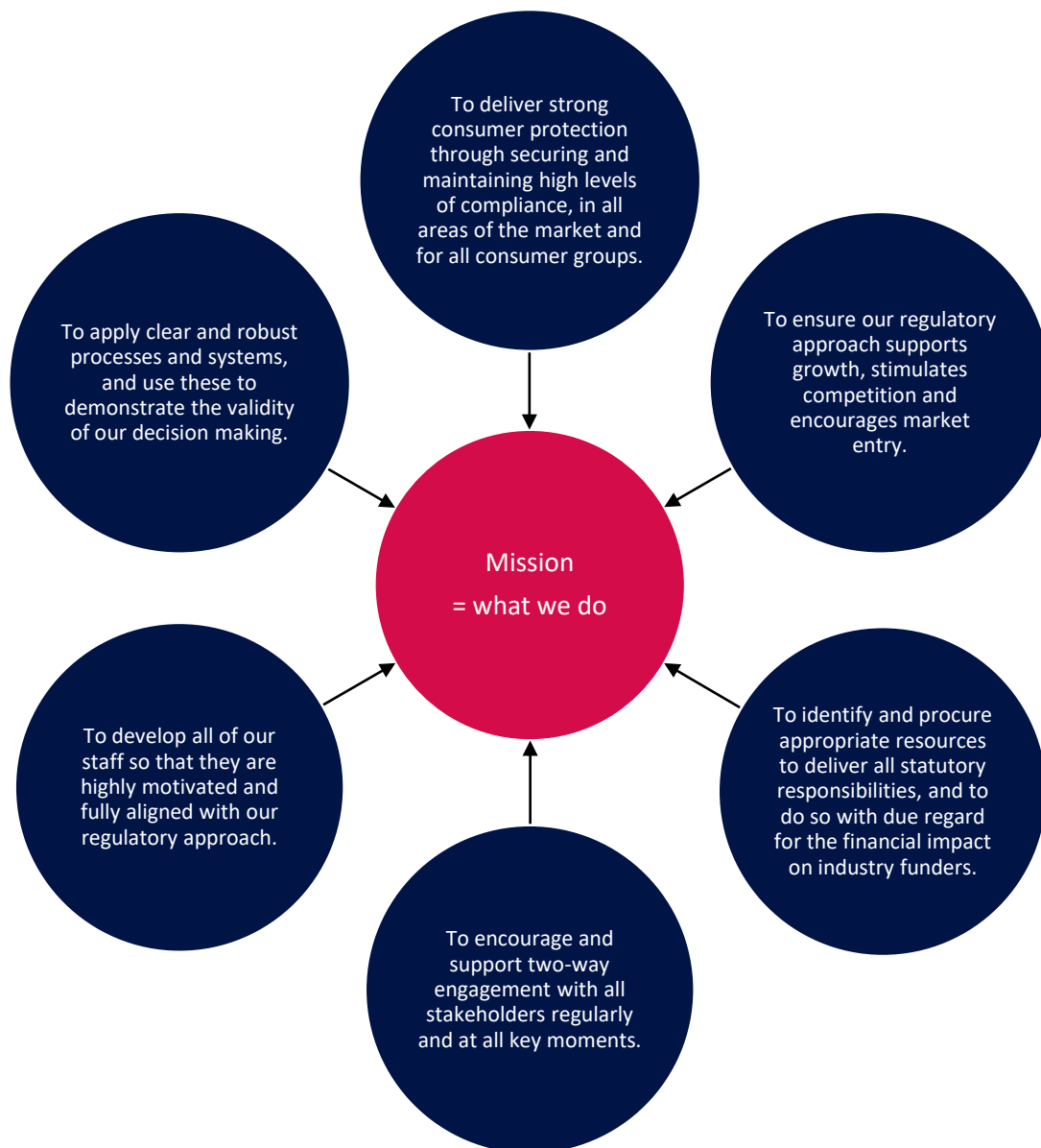
- **Open**  
Look outward, share ideas, listen to others and embrace their knowledge. Collaborate with everyone. Be approachable, transparent and accountable.
- **Decisive**  
Make decisions in a timely manner with confidence and clarity.

### Value for money

- **Effective and productive**  
Pursue our priorities energetically.  
Get it right first time and swiftly deliver effective outcomes.  
Innovate to find creative solutions and work more efficiently
- **Professional**  
Be experts: we are role models and we support others.  
Be reliable because we are consistent, pay attention to detail and are focused on quality.

## Our Strategic Priorities

Our mission describes what we do as an organisation. The six strategic priorities set out below provide the emphasis as to how we want to deliver our mission:



## 1.2 Regulatory Responsibilities

The regulatory function of Phone-paid Services Authority is to supervise the content, promotion and operation of premium rate services primarily by drawing up and enforcing a Code of Practice ('the Code').

The Code focuses on the underlying outcomes of consumer protection to achieve a regulatory regime that gives both greater clarity and more flexibility to providers of premium rate services. This involves the following principal tasks:

1. Setting and maintaining outcomes/standards and, as appropriate, requirements for the content, promotion and marketing and provision of premium rate services, and keeping these standards under review.
2. Monitoring premium rate services to ensure compliance with these standards.
3. Consulting widely with interested parties before changing these standards.
4. Providing a system for adjudications and administering a system for the payment of claims for compensation for unauthorised use of live services.
5. Investigating and adjudicating upon complaints relating to the content, promotion and marketing of premium rate services, which may include the imposition of sanctions upon providers or network operators.
6. Issuing directions, either generally or to individual providers of premium rate services, including network operators, to procure compliance with the Code and/or to secure enforcement of its provisions.
7. Determining any categories of premium rate services which may only be provided on the basis of compliance with Special Conditions (or the grant of a specific prior permission from Phone-paid Services Authority).
8. Keeping such categories and conditions under review, and receiving, considering and determining applications for prior permission and/or disapplication.

In addition, Phone-paid Services Authority publishes reports on its work at regular intervals, and commissions research in support of policy and regulatory development.

Phone-paid Services Authority operates in accordance with the principles of good regulation promoted by the Government namely:

*transparency; accountability; targeting; consistency; and proportionality.*

## 1.3 Scope of the Code - Legal Framework

The regulatory powers of Phone-paid Services Authority derive from the Communications Act 2003 ('the Act'), specifically sections 120-124 dealing with the regulation of premium rate services. The Act provides Ofcom with the power to approve a Code for the purposes of regulating premium rate services and Ofcom has approved the Phone-paid Services Authority Code under Section 121 of the Act. Certain providers of premium rate services are obliged,



pursuant to the premium rate service condition ('the Condition') set by Ofcom under the Act and Section 120(3) (a) of the Act, to comply with directions given by Phone-paid Services Authority in accordance with its Code of Practice for the purpose of enforcing its provisions. The Condition set by Ofcom applies to controlled premium rate services, the definition of which is contained within Part Five of the Code.

The previous edition of the Code ("13<sup>th</sup> Code") brought parts of the Code into line with Ofcom's non-geographic call services (NGCS) changes, which came into effect on 1st July 2015. The Code is principles based and adopts the Ofcom requirement for a registration database as a central element of industry due diligence.

Phone-paid Services Authority regulates through the imposition of responsibilities on providers of premium rate services. Three categories of providers are defined in the Code under Part Five: essentially these are Network operators, Level 1 providers (who form part of a premium rate value-chain) and Level 2 providers (the end provider of the service). A provider of premium rate services may fall within more than one of these categories. Through the Code, Phone-paid Services Authority requires clear and accurate pricing information and honest advertising and service content. It can also require services deemed to be high risk to comply with Special Conditions set out in an Annex to the Code and has the power to require prior permission for certain service categories. Phone-paid Services Authority has the power to impose sanctions for any breach of its Code by the person/body providing or facilitating the provision of a PRS.

Under section 6 of the Human Rights Act 1998, there is a duty on Phone-paid Services Authority (as a public authority) to ensure that it does not act in a way that is incompatible with the European Convention on Human Rights ("the Convention"). Article 6 of the Convention provides for the right to a fair trial, which does not occur at Code Adjudication Panel Tribunal hearings where the respondent is not present. That is a function of the non-adversarial adjudicatory process. However, respondents have the right to an oral hearing, and to further appeal and these procedures ensure that Article 6 of the Convention is complied with.

Article 10 of the Convention provides for the right to freedom of expression. It encompasses the right to "impart information and ideas" and also the right to "receive information and ideas without interference by public authority". Such rights may only be restricted if the restrictions are *"prescribed in law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary"* (Article 10(2) of the Convention).

Phone-paid Services Authority must exercise its duty in light of these rights and not interfere with the exercise of these rights in premium rate services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary in order to achieve a legitimate aim.

## **The 14th Code**

Following a detailed review of our enforcement strategy in 2015, Phone-paid Services Authority introduced changes to its enforcement procedures by means of the introduction of the 14<sup>th</sup> edition of the Code of Practice.

The key changes are summarised as follows:

- Bringing forward the consideration of interim measures – i.e. withholds and/or suspensions – to an earlier stage in all Track 2 investigations.
- The establishment of the CAP to replace the Code Compliance Panel (CCP), which (unlike the CAP) included members from the Board. This demonstrates clear separation between those who make the Code – the Board – and those who enforce it.
- An internal mechanism to review the recommendations of the Investigations team before breaches and sanctions are outlined to the provider in a “Warning Notice”.
- Enhanced potential for providers to settle cases once they have received the Warning Notice, and prior to a hearing.
- A more flexible hearing, which allows for different levels of oral and legal representation.

The 14th Code is underpinned by the Supporting Procedures which are available on our website.

## **1.4 Relationship with Ofcom**

Ofcom is the statutory regulator responsible for regulating the UK communications market. The Communications Act 2003, under which Ofcom was created makes provision for the regulation of premium rate services (PRS) as set out under s120-124 of the Act.

Phone-paid Services Authority is responsible for the exercise of regulatory, governance and operational functions in respect of the application and enforcement of the Code. Save where Phone-paid Services Authority refers a person’s failure to comply with a direction to Ofcom, Ofcom has no role in relation to the application and enforcement of the Code. However, Ofcom has the powers set out in the Communications Act and may, amongst other things, withdraw its approval from the Code in accordance with section 121 of the 2003 Act.

Phone-paid Services Authority’s relationship with Ofcom is governed by a Memorandum of Understanding (MoU). The most recent version, agreed in March 2015, can be found on the website under the publication scheme.

Ofcom and Phone-paid Services Authority have, for the purposes of managing the relationship between their organisations in accordance with the relevant statutory provisions and as set out in the MoU, agreed the following arrangements:

- A senior Ofcom officer, “the Sponsor”, will be appointed and acts as an interface between the two organisations. The Sponsor is entitled to attend Phone-paid Services Authority Board meetings as an observer. Phone-paid Services Authority will provide information reasonably required by the Sponsor.

- Phone-paid Services Authority will consult with Ofcom on the decisions Phone-paid Services Authority proposes to make in relation to the recruitment (or re-appointment) of its Board and Chief Executive and will invite an Ofcom representative to sit on the appointment (and re-appointment) panels. All such appointments and re-appointments will be subject to approval by Ofcom.
- Phone-paid Services Authority and Ofcom will agree annual and medium term objectives, strategies and related funding arrangements. Final decisions on these matters rest with Ofcom but will be informed by recommendations from the Board based on their knowledge of the sector and relevant trends.
- Phone-paid Services Authority will consult on an annual basis with Ofcom in relation to Phone-paid Services Authority's proposed budget plan, which shall include its operational and policy plans and targets and its budget. The Phone-paid Services Authority budget and business plan will be subject to approval by Ofcom on an annual basis and shall be set within the framework of the Phone-paid Services Authority strategic plan. In addition, Phone-paid Services Authority will provide Ofcom with regular updates in relation to its business plan and budget. Phone-paid Services Authority will keep under review the PRS market and the appropriateness of Code provisions and consult with Ofcom where regulatory intervention is required and/or there are proposals for amending the Code.
- As part of any consultation in respect of decisions it proposes to take, Phone-paid Services Authority will have due regard to any views expressed by Ofcom as part of any consultation and in accordance with the terms as set out in the MoU between Phone-paid Services Authority and Ofcom.

Notwithstanding the above arrangements Ofcom has confirmed that it will not act in any way that obstructs Phone-paid Services Authority directors from acting in accordance with their legal responsibilities. It should also be noted that the MoU has no legal basis underpinning it.

## **1.5 Relationship with DCMS**

PSA is classified by the Office for National Statistics as a Central Government body. While this classification remains in place, PSA shall be an Arms-Length Body (ALB) of DCMS on the basis that PSA is independent of Ofcom and its finances and other matters are not consolidated into those of Ofcom.

The Department expects PSA to follow the standards, rules, guidance and advice in Managing Public Money to the extent that they are relevant and appropriate for PSA. There will always be instances where it is not appropriate for a specific body to follow general guidance. PSA recognises that DCMS, as its sponsor department, has a legitimate interest in understanding which elements of that guidance are not relevant or appropriate for PSA to follow and, in its judgement as an Independent body, it believes the public interest is best served by taking a different approach. As such PSA agrees to notify DCMS where such instances arise.

The Permanent Secretary is the Accounting Officer for DCMS. PSA will provide such information and assistance as the Permanent Secretary may reasonably require in relation to the financial and management controls that PSA has in place to ensure the proper performance of its duties, appropriate assessment of risk, and the escalation of concerns to the PSA Board as appropriate.

Phone-paid Services Authority's relationship with DCMS is governed by a Framework Agreement. The most recent version, agreed in July 2017, can be found on the website under the publication scheme.

## **1.6 Board Responsibilities and Powers**

The main functions of Board members involve:

1. Within the context of the MoU with Ofcom, formulating Phone-paid Services Authority policies and strategies, including the development and enforcement of the Code.
2. Setting and reviewing the strategy and annual business plan.
3. Supervising the work of the Executive, which is accountable to the Board for ensuring the provision of an effective and efficient regulatory service.
4. Reviewing the effectiveness of the Code Compliance Panel which undertakes all adjudications (paper and oral, and including directions for interim measures), and reviews under the Code.

Board members are Directors of Phone-paid Services Authority Limited, a non-profit making company limited by guarantee, and in this capacity their responsibilities include:

1. Preparing accounts for each financial year which represents a true and fair view of the state of affairs of the company and of its financial results for that period.
2. In preparing these accounts, the Directors of Phone-paid Services Authority are required to:
  - select suitable accounting policies and then apply them consistently;
  - make judgements and estimates that are reasonable and prudent;
  - state whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the accounts;
  - prepare the accounts of the company on the basis of a going concern unless it is inappropriate to presume that the company will continue in business.
3. Keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the Company and enable them to ensure that the accounts comply with the relevant provisions of the Companies Act 2006.
4. Taking such steps as are reasonably open to them, such as through effective risk management plans, to safeguard the assets of the Company and to prevent and detect fraud and other irregularities.

Board members are responsible for fulfilling these accounting responsibilities as well as for fulfilling their statutory duties as Directors of Phone-paid Services Authority - set out more fully under Appendix E.

Although Board members receive payments from Phone-paid Services Authority as non-executive Directors, they are officers but not employees of Phone-paid Services Authority Ltd.

The powers of the Board are set out in full under Appendix G.

## **1.7 Board of Directors**

The Board comprises a part-time Chairman (a non-Executive Director), the Chief Executive of Phone-paid Services Authority and up to five part-time members (non-Executive Directors). One member (usually non-industry) is appointed by the Chairman as the Senior Independent Director ('SID'). The SID, who has the same general legal responsibilities to the Company as any other director, acts as a sounding board for the Chairman and serves as an intermediary for the other directors where necessary. A minority of the Board members are appointed on the basis that they have relevant industry knowledge. The Board does not exercise any adjudicatory functions within Phone-paid Services Authority.

Non-industry members form the majority of the Board and are independent of the premium rate industry having no current involvement in the connectivity, provision or promotion of premium rate services; if an involvement in the premium rate industry does arise, such an interest must be declared.

## **1.8 Board Members' Activities**

The work of Board members involves attendance at meetings that are usually held at Phone-paid Services Authority offices in London. These comprise four Board meetings a year of two to five hours' duration, as well as standing sub-Committee meetings and ad hoc working groups as well as up to two planning days per annum.

Other aspects of the work are carried out from each Board member's home/office, including reading and preparing for meetings of the Board and relevant sub-Committees and working groups, and commenting on Executive drafts.

There is also a wide range of other activities in which Board members may be involved, including meetings with industry or other interested bodies, attendance and participation in Phone-paid Services Authority Forums and key stakeholder engagement.

The time commitment of a Board member depends on the number of sub-Committees and working groups participated in and could be up to 15 hours a month. It is not possible to quantify this precisely as it will in any case depend partly upon the availability of Board Members.

There are three Committees and their terms of reference are set out at Appendix J.

## **1.9 Board Meetings**

The setting of quorum for board meetings is a matter for the Board to decide from time to time; the current quorum is two Directors.

## **1.10 Independence**

### **Independence as defined in the Code of Practice, Part One, paragraph 1.4**

- 1.4.1 Phone-paid Services Authority operates in an entirely independent manner. All members of the Board are appointed in their individual capacities. Apart from a minority of members who are appointed on the basis of their contemporary industry knowledge, no member of the Board may have any commercial interest in the premium rate sector.
- 1.4.2 Board members shall not sit on Phone-paid Services Authority Code Adjudication Tribunals (hereafter “Tribunals”) that adjudicate on the provisions of the Code pursuant to Part Four and Annex Three of the Code.

## **1.11 The Role of the Chairman of Phone-paid Services Authority**

The Chairman of the Board (Chairman) is expected to be beyond reproach on the question of independence and is expected to ensure that the duties and responsibilities of members are observed. He/she also has particular responsibility for:

- ensuring the Board holds the organisation to account;
- acting as an industry facing ambassador representing Phone-paid Services Authority with key industry stakeholders;
- representing Phone-paid Services Authority in dealing with Ministers, Ofcom and providing effective leadership in meetings of the Board and its members with key external stakeholders;
- directing, supporting and managing the Chief Executive/Executive and ensuring that systems and procedures are in place for plans and targets set by the Board to be met;
- ensuring that the Board meets at regular intervals throughout the year, and that the minutes of meetings and any reports accurately record the decisions taken and, where appropriate, the views of individual members;
- ensuring that new members, when taking up office, are fully briefed on the terms of their appointment and on their duties, rights and responsibilities;
- providing an assessment of members’ performance on request and in accordance with para 2.5 below;
- ensuring that all new members are aware of the rules on conflicts of interest (and register of interests) and that they are bound by this Code of Conduct, reminding all members of these rules at regular intervals;

- taking steps to remind members always to declare relevant interests and, if requested, to withdraw from any discussions where the independence of their advice might be called into question or where there is a real or perceived conflict of interest;
- ensuring that any declared conflict of interest is recorded in the minutes;
- making appointments of members to Phone-paid Services Authority sub-Committees and other working groups. The Chairman may also sit on sub-Committees and working groups but shall not be a member of, nor shall chair, the Audit, Risk and Corporate Governance Committee of Phone-paid Services Authority.

The Chairman works with the Chief Executive and the Board to ensure proper co-ordination of Phone-paid Services Authority's media activities, and to set the public persona of Phone-paid Services Authority and its internal culture. He/she ensures that the internal organisation of Phone-paid Services Authority is effective, and that the Board formulates strategy for discharging the statutory duties of Phone-paid Services Authority.

The Chairman appoints a Senior Independent Director (SID) who will usually be a non-industry member. The SID or another Board member appointed by the Chairman can fulfill all of the Chairman's responsibilities during his absence (or the Board may agree to appoint the SID or other Board member where the Chairman is absent and has not made such appointment). The role and responsibilities of the SID can be found at Appendix F.

### **1.12 The Role of the Investigations Oversight Panel ('IOP')**

Board members do not have adjudicatory responsibilities and are not members of the Code Adjudication Panel. However, they are members of the Investigations Oversight Panel ('IOP').

#### **Supporting Procedures to the Code of Practice (14<sup>th</sup> Edition) - paras. 74 -78:**

74. The Head of Investigations and Enforcement has primary control over ongoing investigations and enforcement action undertaken by the Executive. The person in this role manages the Investigations Team undertaking the tasks associated with those enforcement activities. The Phone-paid Services Authority Investigation Oversight Panel (IOP) includes members of the Leadership Team and non-executive Phone-paid Services Authority Board members. Given the potential reliance necessary on legal advice during case management, whilst the General Counsel who sits on the Leadership Team will be involved in the IOP, s/he will not take part in considering any investigation in which s/he has been previously involved. Furthermore, the Chairman of Phone-paid Services Authority will focus on leading the organisation and will not be involved in the IOP.
75. The IOP acts as a group providing oversight and quality assurance of investigations in support of the Head of Investigations and Enforcement. At specific stages of any investigation members of the IOP give consideration to the planned enforcement activities undertaken by the Investigations Team and may endorse proposed activities or suggest alternative ones.
76. The key stages of any Track 2 investigation may include:



- Assessment of any required interim measures;
  - Assessment of potential breaches and sanctions in draft Warning Notices;
  - Assessment of any acceptance of breaches and sanctions by relevant parties, with the possibility of settlement.
77. At each of these stages, the Investigations Team will submit requisite information to designated members of the IOP for consideration<sup>1</sup>, for which a meeting may be convened. When an IOP consideration is required, normally three (and no less than two) eligible members will be convened for a meeting either in person or via conference call. This would normally involve:
- up to two members of the Leadership Team; and,
  - a non-executive Board member<sup>2</sup>. Where there is no Board member sitting at the meeting, a report summarising the outcome will be made to the Board after the meeting.
78. Also attending the meeting of the IOP will be a Secretariat for the panel, the Head of Investigations and Enforcement, and the relevant Investigations Team member working on the case, who will coordinate any actions required based on the recommendations of the IOP. This may involve making further enquiries to gather or test evidence; switching the case from Track 2 procedure to a Track 1 based on a review of evidence gathered; issue a formal notification to a relevant provider in accordance with the Code, such as a Warning Notice; or consider the closure of the case and other regulatory activities. The CAP is not involved at all in these processes but where a matter (i.e. an Interim Warning Notice, Warning Notice or settlement) is placed before CAP members to consider it will normally have been reviewed by the IOP.

### **1.13 The Code Adjudication Panel (CAP)**

The CAP advises the Board of Phone-paid Services Authority on its activities and trends but is constituted separately from the Board. It acts as a panel of professionals and experts who undertake adjudicatory activity and decision making in relation to Code enforcement on behalf of Phone-paid Services Authority, and its functions and powers are set out in section 4.7 of the Code and Annex 3 to the Code.

#### **The Code Adjudication Panel (Code of Practice, Annex 3, Paragraph 1)**

1.1 Phone-paid Services Authority has established a Code Adjudication Panel ("CAP") consisting of a minimum of 9 and a maximum of 17 members who throughout the entire duration of their membership will not have any commercial interest in the premium rate sector. The CAP will include:

- (a) A Chair of the CAP, who is a qualified barrister or solicitor with not less than 15 year's relevant experience;

<sup>1</sup> The information required will vary depending on the stage of the investigation. Where not otherwise obvious, the Investigations Team member will also provide a paragraph summarising the nature of the service, and Phone-paid Services Authority's concerns.

<sup>2</sup> The eligible members include industry non-executives on the Board who may bring their expertise to any assessment of enforcement activities, except where any conflict of interest exists.



- (b) Up to three but no less than two legally qualified members who are qualified barristers or solicitors with not less than ten years' relevant experience; and
- (c) Up to thirteen but no less than six lay members with adjudicatory and relevant marketing, technical, operational, consumer-based or other experience.

1.2 The Chair of the CAP is appointed by the Board, and shall advise the Board as required on Tribunal activity, trends and related matters. The legally qualified members and lay members are appointed by the Board in consultation with the Chair of the CAP.<sup>3</sup>

1.3 The Board has delegated to the CAP the function of undertaking adjudications in respect of alleged breaches of the Phone-paid Services Authority Code of Practice currently in force ('the Code') and reviews of determinations made by Phone-paid Services Authority in relation to prior permission, including the imposition of conditions upon which prior permission is granted.

#### **1.14 The CAP Relationship with the Board**

The Phone-paid Services Authority Board and Executive provide support and general advice to the CAP to ensure it meets its objectives.

As the Code states the CAP is the body to which the Board delegates its adjudicatory function. The relationship between the CAP and the Board is characterised by six principles;

1. The CAP is responsible for undertaking all adjudications (paper and oral, and including directions for interim measures), and reviews under the Code.
2. The Board is responsible for determining all policy issues.
3. The CAP is accountable to the Board for its performance but not its decisions.
4. The Board and CAP maintain an on-going, two way dialogue on policy issues.
5. The Board may issue guidance to the CAP on general or specific policies/strategies and/or issue Code Guidance to the industry. The CAP will have full regard to the Board's Guidance in its application of the Code and consideration of the facts of the individual cases.
6. In the event of conflict between Guidance and the Code, the CAP will apply the Code.

Under the 14<sup>th</sup> Code, prior permission requirements for high risk services have been in general transposed into Special Conditions. However, the power to impose prior permission on services has been retained in the 14<sup>th</sup> edition of the Code. The Board has created a sub-Committee called the Risk Assessment Committee (RAC), who have responsibility for approving high risk prior permission applications referred to it by the Executive. However, Board has responsibility for approving the variation of conditions within published prior permissions regimes (where these exist) or which involve other policy issues.

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<sup>3</sup> A more detailed process is set out in the Code Adjudication Panel Handbook.

The Board has delegated responsibility for approving all applications for prior permission which involve dis-applying specific Code provisions (para 3.10.4(a) of the Code) to the Executive. However, the Board retains responsibility for approving the permanency of any pilot exemptions made available to individual providers (subject to application) and any generic dis-applications of Code provisions that are proposed by the PSA Executive (para 3.10.5 of the Code).

### **1.15 The Relationship between the Chairman of Phone-paid Services Authority and the Code Adjudication Panel**

The relationship between the Chairman of Phone-paid Services Authority and the CAP is mainly characterized by his/her ordinary exclusion from the Tribunal process.

Phone-paid Services Authority has an obligation to ensure that Tribunal hearings are conducted properly, fairly and in accordance with good practice and the relevant law. Each case must therefore be dealt with in the most expeditious manner compatible with the interests of justice and in accordance with the provisions of the Human Rights Act 1998.

The Chairman of Phone-paid Services Authority is therefore not involved in any part of the Tribunal process, nor does he/she have any right to influence the Tribunal process in any way. The Chairman may however from time to time attend Tribunals and any other ad hoc CAP meetings as an observer.

### **1.16 Liability**

Any legal proceedings initiated by a third party are likely to be brought against Phone-paid Services Authority Limited as an incorporated company. In exceptional cases proceedings might be brought against individuals acting for the company, including Board members. In such cases Board members will be covered by Phone-paid Services Authority's company indemnity.

Phone-paid Services Authority will provide an indemnity to every Director (or other officer or auditor of the Company) under the terms set out in Phone-paid Services Authority's Articles of Association (note the Articles of Association does not cover circumstances where a Board member is convicted for a criminal or civil matter relating to company affairs). Subject to the provisions of the Companies Act 1985, every member, being a Director of Phone-paid Services Authority, shall be indemnified by Phone-paid Services Authority against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him/her by the Court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company, and against all costs, charges, losses, expenses or liabilities incurred by him/her in the execution and discharge (or in relation thereof) of his/her duties.

Members are also provided with professional indemnity insurance cover (subject to various exclusions) against claims for negligence and other usual risks. A copy of the Articles of Association and terms of the insurance policy are available for inspection upon request.

### 1.17 Standards in Public Life

Members must be committed to the mission of Phone-paid Services Authority and be accountable to its stakeholders, who include funders, the industry, Ofcom and DCMS. Members are expected to observe the highest standards of propriety, including impartiality, integrity and objectivity, in relation to the exercise of their office, and to follow the Seven Principles of Public Life set out by the Committee on Standards in Public Life (Appendix I).

In particular, members should comply with this Handbook in all their duties as members, and ensure that they understand their duties, rights and responsibilities, and the functions and role of Phone-paid Services Authority.

When engaging in any political activities, members should exercise proper discretion. They are free to engage in political activities but where they do so they should take all reasonable care that they do not do or say anything that would suggest or imply that Phone-paid Services Authority is anything other than a non-political and independent regulatory body acting under the authority of and in conjunction with Ofcom (in case of doubt, members should seek advice from the Chief Executive or Chairman of the Board).

Members must not misuse information gained in the course of their service to Phone-paid Services Authority for personal gain or for political purpose, nor seek to use the opportunity of public service to promote their private interests or those of connected persons, firms, businesses or other organisations.

Members should not speak on a public platform or in the media and present themselves as a representative of Phone-paid Services Authority, unless and until that has been agreed by the Chairman of the Board.

## Section 2: Appointments to the Board

### 2.1 Procedures

- 2.1.1 Board member vacancies will be advertised or publicly notified. However, the field of potential candidates being considered will not necessarily be limited to those responding to an advertisement. Others may be informed of vacancies by Phone-paid Services Authority on the basis of suggestions by network operators, service providers, existing Board members or other stakeholders.
- 2.1.2 No-one applying for one of the independent, non-industry member positions who has a current financial or other direct or prospective involvement with the premium rate industry will be considered for appointment to the Board, although they may apply for one of the industry vacancies as and when they arise.
- 2.1.3 All potential candidates will have made available to them an application pack setting out the relevant information about the criteria for selection and how to make an application for the position.
- 2.1.4 Phone-paid Services Authority is required to consult with Ofcom on its proposed decisions for the shortlisting, interviewing and appointing and re-appointing of Board members (and a representative from Ofcom will sit on the selection panel) in accordance with the agreed MoU.
- 2.1.5 In respect of Board member vacancies, a panel, appointed by Phone-paid Services Authority Board and in consultation with Ofcom, will prepare a shortlist of candidates. Neither the Chief Executive nor any other staff member will take part in any decision on the appointment of a Board member, though they may be called on for advice or guidance. The decision on whom to appoint will be a matter for the full Board following a recommendation from the panel. All appointments will be subject to Ofcom approval, as per the agreed MoU. The relevant Government Minister will normally be advised as to the proposed appointment.
- 2.1.6 The appointment of a Director will invariably be made formally by the Board of Phone-paid Services Authority Ltd.
- 2.1.7 In respect of a vacancy for the Chairman, the Board will agree, at the time of the recruitment of a new Chairman, the detailed process to be followed which will broadly follow the above arrangements. When considering succession to the role of the Chairman, the Senior Independent Director will set up and chair a Nominations Committee. Ofcom will be represented on such a Committee in line with the current MoU. The Committee will make a recommendation to the Board on the appointment and in turn the Board will make a recommendation to Ofcom to appoint. Appointment will be subject to Ofcom approval.
- 2.1.8 In respect of the appointment of a Senior Independent Director, such a person will be appointed by the Chairman from amongst serving Board members. The Senior

Independent Director's term of office runs concurrently with their general terms of office set out below.

## **2.2 Terms of Office**

- 2.2.1 The term of office for a Board member is fixed at three years but this may be reduced where it benefits the overall continuity of membership going forward.
- 2.2.2 While there is provision for Board members to be re-appointed by the Chairman for a second (and final) term (usually of three years unless some lesser period would benefit the overall continuity of the Board), reappointment is not automatic and will be decided by the Chairman and following consultation with, and final approval by, Ofcom.
- 2.2.3 The Chairman may be re-appointed for a second and final term (usually of three years each unless some different period would benefit the overall continuity of the Board) also. The decision to do this is a matter for the full Board following consultation with, and final approval by, Ofcom.

## **2.3 Induction and Training**

- 2.3.1 Phone-paid Services Authority is committed to the training and development of its members to enable them to carry out their role efficiently and effectively.
- 2.3.2 All new members of the Board will complete a training and induction programme developed by the Chief Executive and Executive to suit individual needs. This will include familiarisation with the Executive's role and work and visits to premium rate service providers and other relevant stakeholders both from within and outside industry.
- 2.3.4 Specialist training will be provided (for example media training or training to participate in the IOP as appropriate) when required to enable a Board member to undertake a designated responsibility.
- 2.3.5 Specific training will be identified as a result of a performance review or otherwise and will be assessed and met.

## **2.4 Performance Reviews**

- 2.4.1 The performance of a new Board member will normally be reviewed by the Chairman by way of a discussion with the member after three months and annually thereafter.
- 2.4.2 If performance reviews lead the Chairman to conclude that a Board member's performance is unsatisfactory, the member may be asked to resign. If the member is unwilling to do so, his or her continuation in office shall be a matter for the Board.
- 2.4.3 The performance review of the Chairman shall be undertaken collectively by the Board members on an annual basis and will be coordinated by the Senior Independent Director. If the performance review leads the Board to agree that the Chairman's performance is unsatisfactory, the Chairman may be asked to resign. Should the

Chairman disagree with the Board's decision, the matter will then be referred to Ofcom.

- 2.4.4 In the event of the Chairman's resignation, the Board will notify Ofcom of the outcome of such performance review before making any public announcement about the Chairman's resignation.

## Section 3: Pay and Expenses

### 3.1 Pay

- 3.1.1 Board members will be paid a fixed annual fee which will account for ad hoc attendance at Board, sub Committee and IOP meetings, as required, including any preparation for one off meetings and related Phone-paid Services Authority work. For industry non-Executive members there will be additional attendance required for industry meetings. The current fixed fees are notified to all Board members as and when they change. The Executive will automatically credit members with a fixed amount in their pay each month.
- 3.1.2 Claims for other additional hours worked under exceptional circumstances, must be submitted on a monthly timesheet, copies of which are available from the Executive and which are reimbursed usually the following month.
- 3.1.3 Fixed amounts are reviewed annually following a review by the Resources Committee as formally ratified by the Board.
- 3.1.4 Board members are not eligible to join the Phone-paid Services Authority pension scheme and no pension scheme contributions are payable. As officers, PAYE and NIC are deducted from their fees at source.

### 3.2 Expenses

- 3.2.1 Members may reclaim travel expenses and where appropriate subsistence which are incurred wholly and necessarily in the discharge of their duties as office holders.
- 3.2.2 For rail journeys on Phone-paid Services Authority business, reimbursement will be for standard class tickets. Taxi fares incurred while on Phone-paid Services Authority business and to and from Board and other meetings (from within the London area), as well as any public transport fares, can be reclaimed under exceptional circumstances. Air travel, when it has been agreed in advance, may also be claimed unless organised by the Executive, which it normally will be. This will always be booked standard class unless it is a long-haul journey, in which case business class or premium economy will be provided. There is no upper limit laid down by HMRC and Board members should always ask the Executive for advice when arranging hotel accommodation where required for Phone-paid Services Authority business.
- 3.2.3 When car travel is necessary, mileage can be claimed at existing HMRC rates. Further information can be obtained via <http://www.hmrc.gov.uk/rates/travel.htm>.
- 3.2.4 Claims for expenses should be submitted on a monthly expenses sheet and supported by full receipts and vouchers. Expense claims are available from the Executive and attached at Appendix H. The exception to this is circumstances where receipts are not available, e.g. London Underground travel using an Oyster card for payment and car mileage.

- 3.2.5 Phone-paid Services Authority has entered into a Settlement Agreement with HM Revenue & Customs with respect to Board member travel from home to Phone-paid Services Authority. The effect of this is that Phone-paid Services Authority will pay the tax and NI for affected members on such travel expenses to Phone-paid Services Authority. The dispensation covers business travel and subsistence expenses provided those expenses are reasonable.
- 3.2.6 Phone-paid Services Authority, like many organisations, has a dispensation relating to other expenses. This means that specified expenses need not appear on form P11D. A copy of the letter of dispensation provided by HMRC is available to all members. Phone-paid Services Authority submits an annual P11D return to the Inland Revenue for each member, stating the amount paid in expenses covering travel from the member's home or office to and from Phone-paid Services Authority. Members may be liable to pay income tax on these amounts.

### **3.3 Board Member Remuneration**

Board members' pay policy is proposed by the Resources Committee, agreed by the full Board. The policy is included in the annual budget setting process, which itself includes consultation and approval by Ofcom. Ofcom will be notified of Board member pay revisions via the customary channels of communication between Ofcom and Phone-paid Services Authority.



## Section 4: Code of Conduct

### 4.1 Principles

- 4.1 This Code of Conduct sets out the standard of conduct expected of all Board members in the performance of their duties, with the objective of maintaining the highest levels of integrity, impartiality and objectivity and of promoting the effectiveness with which they perform their role. These standards follow the Standards in Public Life referred under Appendix I.

Members must identify for themselves any possible conflicts of interest which may arise and be aware of the appropriate action they should take. Board members are expected to commit themselves to the spirit of this Code of Conduct as well as to its specific provisions. On appointment, members will be asked to sign an undertaking that they will comply with this handbook as set out in Appendix A.

### 4.2 Overriding General Duty

- 4.2.1 The overriding duty of a Board Member is to act independently and fairly and in the best interests of Phone-paid Services Authority as a whole, and not pursuant to any other business, group or personal interest.
- 4.2.2 A conflict of interest arises where an individual with a responsibility to act as an impartial Board member may be affected, or may be *perceived* by an independent observer to be affected, in that action by a personal interest or association. Such a conflict may involve a direct or indirect financial interest but may also be non-financial - for example a present or past business or personal association or relationship.
- 4.2.3 A Board member is required to disclose direct or indirect financial interests which might give rise to a conflict of interest relating to his or her Phone-paid Services Authority duties. Disclosure is also required of any non-financial interest (such as kinship or a past, present or prospective business relationship) which might influence his or her judgement as a Board member.
- 4.2.4 Board members must declare their relevant interests in issues to be discussed at formal meetings of the Board. The interest should be declared in advance of the meeting, and again prior to discussion of the relevant agenda item at the meeting usually under the standing declaration agenda item at the start of the meeting.

After members have fully explained the nature of their interests the Chairman, or the Board collectively such as in the case of a declaration from the Chairman, will decide whether and to what extent the member should participate in the discussion and determination of the issue. If it is decided that the member should leave the meeting, the Chairman, or the Board collectively such as in the case of a declaration from the Chairman, may first allow them to make a statement on the item under discussion.

Where the Chairman has a relevant interest and leaves the meeting, another non-industry Board member, usually the Senior Independent Director, will chair the discussion of the relevant agenda item.

### **4.3 Standing Declaration of Interest**

- 4.3.1 On appointment each Board member is required to complete a confidential standing declaration of interest form (Appendix B). If there are material changes to the declaration then a new one should be completed. All Board members will be asked to complete a new declaration annually.
- 4.3.2 This declaration should list any material financial interest, including investments, employment, consultancies, directorships or commissions held either personally, as a trustee or as effective controller of a company (whether or not this is achieved by a majority interest). "Material" means any interest which could reasonably be perceived as sufficient to place a Board member in the position of having a potential conflict of interest and/or which may have an influence over financial management. Any changes in these interests must also be declared as and when they occur.
- 4.3.3 This declaration should also cover the interests of the Board member's close family members<sup>4</sup> in the same way as they cover the interests of the Board member.
- 4.3.4 In respect of the standing declarations of the Chairman, the same procedures as those for other Board members will be followed. The declarations will be reviewed by another Board member, such as the Senior Independent Director, nominated jointly by the CEO and the Company Secretary of Phone-paid Services Authority Limited.
- 4.3.5 In doubtful or borderline cases, Board members should disclose their interest or seek advice from the Chairman. Should any doubt arise, the Chairman will consider what guidance should be given to the member concerned, or what other action, if any, should be taken. If the member refuses to accept the Chairman's guidance, the Chairman may disclose to the Board that a doubt has arisen and that the member has refused to accept the Chairman's guidance. The issue will then be a matter for the Board as a whole.
- 4.3.6 Any independent, non-industry member who acquires a direct premium rate services interest or whose close family member acquires such an interest must resign unless the Board specifically resolves to the contrary. In any event the Board does not intend for more than 33% of members to have industry interests.
- 4.3.7 Annually the Company Secretary will provide members with a record of declared interests. Members will consider, amend and return the record. The Company Secretary will keep a file of all the declarations.
- 4.3.8 The content of standing declarations of interest is made publicly available through the Phone-paid Services Authority website.

### **4.4 Specific Disclosure of Conflict of Interest (Bribery Act 2010)**

- 4.4.1 In discharging Phone-paid Services Authority business, all members need to be aware of actual, potential or perceived conflicts that might arise between their private interests and their role responsibilities. This is particularly important given the wide-

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<sup>4</sup> As defined in Appendix C

reaching application of the Bribery Act 2010, which is covered in depth in the Phone-paid Services Authority Anti Bribery Policy. The policy is available upon request.

- 4.4.2 A conflict of interest arises where a member has a private interest that might influence that person's judgement in some way when carrying out their normal day to day duties in their role. Such a conflict may involve a direct or indirect financial and/or non-financial interest, for example a present or past business or personal association or relationship. Members are required to disclose all interests that actually or potentially could be perceived as a conflict with their obligation to act in the best interests of Phone-paid Services Authority. The Board member concerned should declare these interests to the Chairman.
- 4.4.3 Actual, potential or perceived conflicts of interest may arise in connection with, for example: personal relationships (which includes close friendships and family relationships); employee relationships; friendships on social media; procurement of services; business meetings; use of Phone-paid Services Authority premises, equipment and materials; external activities and public comment; gifts and hospitality relating to work; use of confidential information; fellowships, trusteeships and/or memberships; indirect support or sponsorships; memberships of clubs, trade bodies; public appointments, financial interests; an expectation of future interest in any of the above. The list is non-exhaustive.
- 4.4.4 In exceptional cases where disclosure of the nature of the possible conflict of interest might involve a breach of other duties (of confidentiality, for example), the member may withdraw from consideration of the matter without specifying the nature of the possible conflict of interest.
- 4.4.5 Where a possible conflict of interest can be anticipated, the Board member should declare that there is a potential conflict to the Chair and exclude himself or herself from distribution of documents or attendance at the meeting and withdraw from any decision making in which the conflict may become material and for the agenda item concerned.
- 4.4.6 Industry members ordinarily need not declare a possible conflict of interest or exclude themselves from the distribution of documents or attendance at a meeting where that possible conflict arises only by reason of an interest already disclosed as part of that members standing declaration of interest and the possible conflict is readily apparent from that declaration. Industry members must be particularly alert to the possibility of conflicts of interest arising and in cases of any doubt should disclose the possible conflict of interest. To this end all Board meetings will commence with a "standing declarations" agenda item where any member can record any meeting agenda items where they have a standing or specific conflict which may have been already registered or previously raised with the Chairman.

## **4.5 Confidential Information**

Board members must not disclose confidential information to the media or the public, or use confidential information for their own financial or other advantage. Board Members should be aware of, and abide by, Phone-paid Services Authority's policy on personal data and confidentiality – copies of which are set in Appendix K and L respectively.

Board members should treat all papers provided to them by Phone-paid Services Authority as confidential and subject to the provisions of the Data Protection Act 1998, unless otherwise advised and unless the documents are known to be in the public domain and/or published on the Phone-paid Services Authority website. Board members should not discuss the content of CAP Tribunals with others outside Phone-paid Services Authority. Board members must undertake to store and dispose of papers in the securest possible way and either arrange for them to be destroyed through secure means at Phone-paid Services Authority's offices or ensure that they are otherwise securely destroyed. Where papers contain sensitive personal data extra caution should be taken to ensure secure destruction.

Board members must not speak on a public platform or to the media, nor present themselves as a representative of Phone-paid Services Authority unless and until this has been agreed by the Chairman. Where Board members are speaking on public platforms in other capacities, they should ensure there is no reasonable possibility that their comments could be seen to be attributed to Phone-paid Services Authority and/or be perceived to represent a Phone-paid Services Authority view point.

#### **4.6 Insider Dealing**

Board members must not acquire or dispose of investments if they hold any information relevant to such investments through their involvement with Phone-paid Services Authority if such information is unpublished price-sensitive information.

Price-sensitive information means any specific information which would be liable to affect the price of a company's security. Price-sensitive information includes, but is not necessarily limited to:

- any proposed take-over or merger;
- any potential company insolvency;
- unpublished information as to company profits or losses;
- any unannounced decision by a company in relation to dividend payments;
- any unannounced decision by a company about changes to the price levels or structures of its services;
- any unannounced decisions by a company to enter a new market or leave an existing market;
- any relevant Phone-paid Services Authority investigation or impending sanction.

In case of doubt, unpublished and confidential information should be treated as being price-sensitive.

These provisions on confidential information and insider dealing continue to apply without time limit after a Board member's appointment has finished.

## **4.7 Gifts and Hospitality**

- 47.1 To avoid the possibility that the integrity or objectivity of Board members may be put at risk, or be considered at risk, the offer or receipt of any relevant personal gift or hospitality from a member of the premium rate services industry must be reported to the Chairman if its monetary value is greater than £50 (Appendix D). Members should not accept or offer a gift, hospitality or some other benefit as a reward, either for doing or not doing something in their capacity as a Board member, or for showing advantage to someone or to an organisation. Gifts of cash should always be refused.
- 4.7.2 If a Board member is aware in advance of the possibility that a gift or hospitality worth more than £50 may be offered, clearance should be obtained from the Chairman.
- 4.7.3 Isolated gifts of a trivial nature or minor seasonal items such as calendars or diaries may be accepted. Offers of conventional hospitality (such as a working lunch, working dinner or refreshments during meetings) may be accepted from individuals and organisations external to Phone-paid Services Authority where it is normal and reasonable in the circumstances.

## **4.8 Failure to observe the Code of Conduct**

- 4.8.1 Board members failing to perform the duties required of them in line with the general standards expected in public life or the specific provisions of this Code, or being unfit to perform these duties, will be judged as failing to carry out the duties of their office.
- 4.8.2 Such failure may result in their removal from office. This will be a decision of the Chairman (in consultation with the Board). If such failure applies to the Chairman, the decision will be made by the Board and any action will be following notification to Ofcom.

## Appendix A: Undertaking

To the Chairman of Phone-paid Services Authority

I,.....

As a Board Member of Phone-paid Services Authority Limited

Confirm that I have read the Code of Conduct Members' Handbook and Undertake to comply with its provisions.

Signed .....

Dated .....

## Appendix B: Annual Declaration of Interest Form

All Phone-paid Services Authority Board, Committee and CAP members are required to declare all matters which may represent a conflict of interest or potential conflict of interest and which are, or could become relevant to the work of Phone-paid Services Authority. These are interests that might affect the carrying out of their duties. An interest may be 'direct' (through themselves) or 'indirect' (through a close family member or a nominee). Where members are uncertain as to whether a particular interest should be declared they should seek further guidance from the Executive. In doubtful or borderline cases, members should disclose their interest.

The systems and controls to identify and authorise related party transactions take the form of the recording of annual declarations of interest and requesting members to update their interests, should their circumstances change, within the annual period.

### Notes on terminology:

'*Industry*' means any organisation or individual involved, whether or not for profit, with the connectivity, advertising, promotion or production of content for PRS or whose business activities could be affected by Phone-paid Services Authority's decisions.

'*Relevant bodies*' means organisations with a specific interest in PRS issues as defined above, such as trade bodies.

'*Close family*' of an individual are those family members, or members of the same household, who may be expected to influence, or be influenced by, that person in their dealings with the reporting entity. Typically, this will include: the individual's domestic partner and children, children of the individual's domestic partner and dependants of the individual or the individual's domestic partner.

'*Investment(s)*' does not include indirect shareholdings through OEICS and/or Unit Trusts or similar collective funding arrangements such as a self-invested personal pension (SIPP) where the investor has no influence over the financial management of the shares.

"*Material*" means any interest which could reasonably be perceived as sufficient to place a member in the position of having a potential conflict of interest and/or which may have an influence over financial management.

### Notes on Related Parties:

Broadly, a related party of Phone-paid Services Authority or a Director of Phone-paid Services Authority is a person or organisation which either directly or indirectly controls, has joint control of, or significantly influences Phone-paid Services Authority or vice versa. Therefore, related parties include/exclude the following:

Included	Excluded

Shareholders (as a guide; with more than 20% of the voting rights)	Providers of finance in the course of their business (e.g. banks)
Directors	Utility companies
Other key management	Government departments
Close family of the above (see definition under notes and requirement to name members)	Customers, suppliers, franchisers, distributors or general agents with whom the entity transacts a significant volume of business
Other business interests of the above	Trade unions
Retirement benefit schemes	
(If in a group) Parent company, together with directors and 20%+ shareholders	
Fellow subsidiary companies	
Joint ventures and associates	



Name of member:

<b>Material Financial Interests</b>
Any investment, financial or other beneficial interest in industry or other interest in companies and/or the communications sector held by you or a close family member, whose core business activities could be affected by Phone-paid Services Authority's decisions. This also includes shareholders, as a guide; <b>with more than 20% of the voting rights.</b>
<b>Employment, Consultancies, Directorship or Commissions</b>
Any directorship, key management, partnership, consultancy, contract, employment, position in or work for, commissioned or fee paid work which attracts regular or occasional payment whether in cash or in kind or from which any other benefit is derived which you or a close family member have in industry, a relevant body or the communication sectors, and any non-remunerated positions which may fall within Phone-paid Services Authority or any other PRS related sphere.
<b>Membership of Clubs, Trade &amp; Public Bodies And Other Organisations</b>
Any membership, role or affiliation to clubs or organisations with a current or potential interest or involvement in the PRS sector held by you or a close family member whether acting as office holder or trustee for pressure groups, trade unions, voluntary or not-for-profit organisations which have a campaigning and/or fundraising interest in issues around PRS policy. This also includes any joint ventures and associates related parties.

<b>Indirect Support</b>
Any payment or other form of financial or material support or sponsorship that you receive from any organisation that falls within Phone-paid Services Authority or any other PRS related sphere and benefits an organisation in which you or a close family member has an interest (for example a grant or sponsorship of an academic post).
<b>Trusteeships</b>
Any investment or involvement in the PRS sector in industry held by a charity for which you or a close family member is a trustee.
<b>Any Relevant Retirement Benefit Schemes</b>
Any retirement benefit schemes for you or a close family member with a current or potential interest or involvement in the PRS sector which might influence your judgement, deliberation, action as a member of Phone-paid Services Authority or might be perceived by a reasonable member of the public as doing so.
<b>Any Other Details of Relevant Interests/Conflicts Not Covered Above, Including Significant Interests of A Close Family Member</b>
For example: interests that might influence your judgement, deliberation, action as a member of Phone-paid Services Authority or might be perceived by a reasonable member of the public as doing so.

<i>Names and Dates Of Birth Of Close Family Members; Partner, Spouse, Dependants</i>

<b>DECLARATION</b>	
<b>Name:</b>	
<b>Body:</b>	
<b>Signed:</b>	
<b>Dated:</b>	

## Appendix C: Standing Declaration of Interest Guidance

This Appendix provides guidance on the kinds of interests that should be declared and include, but are not limited to, interests from which Members derive a direct benefit or in which they are personally involved, and rewards or payments which benefit an organisation for which the member is responsible, by which the member is employed, or from which he or she benefits financially, but which is not received personally by the member.

For the purposes of the guidance below, 'industry' means any organisation or individual involved, for profit or not, with the connectivity, advertising, promotion, or production of content for premium rate services (PRS) or whose business activities could be affected by Phone-paid Services Authority's decisions. 'Relevant bodies' means organisations with a specific interest in PRS issues as defined above, such as trade bodies. Where members are uncertain as to whether an interest should be declared they should seek further guidance from the Company Secretary or, where it may concern a particular issue to be considered at a meeting, from the Chairman of that meeting.

If members have interests not specified in these notes but which they believe could be regarded as influencing their advice they should declare them. This could include close personal friendships. Members should make reasonable enquiries to determine links of which they might be expected to be aware, for example, either through the interests of close family members or links of direct ownership between one company and another. For the purposes of this guidance, 'close family member of an individual are those family members, or members of the same household, who may be expected to influence, or be influenced by, that person in their dealings with the reporting entity. Typically, this will include: the individual's domestic partner and children, children of the individual's domestic partner and dependants of the individual or the individual's domestic partner.

Categories of interests include but are not necessarily limited to:

- **Consultancies and/or direct employment:**

Any consultancy, other employment, partnership, directorship or position in or work for an industry body or other relevant bodies which attracts regular or occasional payments in cash, recognition in any other form, or from which any other benefit is derived.

- **Fee-paid Work:**

Any commissioned work for a PRS related industry or other relevant body for which the member or close family member is paid in cash or kind.

- **Shareholdings:**

Any shareholding or other beneficial interest in any PRS industry with more than 20% of the voting rights. This does not include indirect shareholdings through OEICS and/or unit trusts or similar collective funding arrangements such as a self- invested personal pension where the member has no influence on financial management of the shares.

- **Clubs and other organisations:**

Any membership, role or affiliation to clubs or organisations such as a trade body with a current or potential interest or involvement in the PRS sector held by the member or a close family member whether acting as office holder or trustee for pressure groups, trade unions, voluntary or not-for-profit organisations which have a campaigning and/or fundraising interest in issues around PRS policy. This also includes any joint ventures and associated parties.

- **Support by industry or other relevant bodies:**

Any payment, other form of financial or material support or sponsorship which falls within Phone-paid Services Authority or any PRS related sphere and benefits an organisation in which the member or a close family member has an interest, for example, a grant or sponsorship of a post or programme, or payment for research or advice.

- **Trusteeships:**

Any investment or involvement in the PRS sector in industry held by a charity of which a member or close family member is a trustee.

## Appendix D: Gifts and Hospitality

In accordance with paragraph 4.7 of the Code of Conduct Handbook, Board members are required to complete this form where they accept a gift or hospitality where the value is deemed to exceed £50.

To the Chairman of the Phone-paid Services Authority

I,....., a Member of Phone-paid Services Authority Limited, hereby confirm that I have

been offered [delete as necessary]

received [delete as necessary]

the following gift or hospitality having a monetary value greater than £50:

.....  
.....

from the following member of the premium rate industry or organisation with an interest in premium rate services:

Name:.....

Company:.....

Date of receipt of gift or hospitality.....

Signed .....

Date .....

## Appendix E: Duties of Company Directors

### 1. Introduction

#### 1.1 Duties and Powers of Directors

The law does not provide a single coherent code of conduct for directors. Provisions as to a director's general qualifications, duties and responsibilities can be found in Part 10 of the Companies Act 2006 ('CA 2006'), and a statutory definition of a director's statutory duties can be found in sections 171-177 CA 2006. Other more specific duties are imposed on directors elsewhere in the CA 2006 and in other associated legislation, especially the Insolvency Acts 1986 - 2000. In addition, the courts have considered different aspects of a director's functions. The various heads of 'Duties' which have been developed by case law are summarised below in Section 2. Statutory provisions are outlined in Sections 3 and 4.

There is no statutory definition of a director's powers. A company has general powers given to it by law and by its Memorandum. The exercise of these powers is determined by its Articles of Association. A director, therefore, may operate only according to the rules contained in the Articles and within the powers of the company.

#### 1.2 Non-Executive Directors

All directors, executive and non-executive, *prima facie* owe the same duties to the company. They have a legal duty to act honestly, in good faith and in the interests of the company as a whole, and to take proper care of the assets of the company. Executive directors (such as the Chief Executive) will in addition owe special duties arising out of their contracts of employment. Other than through their directorship, non-executive directors should have no contractual relationship with the company. Their role is to help the Board pay proper attention to long-term strategic direction.

The independence of non-executive directors has three particular contributions to make:

- i. to widen the horizons within which the Board determines strategy;
- ii. to take responsibility for monitoring management performance; and
- iii. to ensure that the Board has adequate systems to safeguard the interests of the company where these may conflict with the personal interests of individual directors (for example, the existence and enforcement of the Code of Conduct for Phone-paid Services Authority Board members).

### 2. Fiduciary Duties

2.1 Directors are in a position of trust within the company and, as such, they owe certain fiduciary duties to the company. These can be summarised as follows.

#### 2.1.1 Conflict of Interest

A director must not put himself or herself in a position where the interests of the company conflict with the director's personal interest or duty to a third party. Note that a director will not commit a breach merely by getting into a position of potential conflict - thus a person may be a director of more than one company, even if they are in competition - but it is better to

avoid the possibility of such conflict. It is also permissible for a director to promote his or her own interests or those of anyone else where to do so is in the company's interests.

### **2.1.2 Not to make a Secret Profit**

A director must not make a profit out of his or her position as a director unless the company permits this. In relation to company property, the director is in a similar position to trustees. Company property includes money, tangible assets and also confidential information such as trade secrets and details of business opportunities. If any company property is misapplied, the directors are answerable as trustees. The Articles should provide specifically for remuneration of directors and for the situations where they are allowed to be interested in contracts with their companies and to keep profits.

### **2.1.3 Acting in Good Faith**

A director must act in good faith in the interests of the company. The directors should not exceed the powers they have been given by the Articles and should use the powers for the purpose for which they have been given and not for some unauthorised reason.

### **2.1.4 Duty of Skill and Care**

The standard of care *and* skill is judged on both a subjective and objective basis. Directors are required to exercise the degree of competence which could reasonably be expected from someone with their degree of knowledge and experience *and* which a reasonable person carrying out the functions of the Director would be reasonably expected to have.

## **2.2 Breach of Fiduciary Duty**

If a director is in breach of his or her fiduciary duty, the company may seek to invalidate the actions in question of the director. It can also attempt to recover a loss from the director or prevent a director's unjust enrichment.

## **3. Statutory Duties Extending or Modifying Fiduciary Duties**

### **3.1 General duties (Sections 171-177 Companies Act 2006)**

Directors have a statutory obligation to:

- i. act in accordance with the company's constitution and only exercise powers for the purpose for which they are intended;
- ii. promote the success of the company;
- iii. exercise independent judgment;
- iv. exercise reasonable care, skill and diligence;
- v. avoid conflicts of interest;
- vi. not accept benefits from third parties;
- vii. declare interests in proposed transactions or arrangements with the company.

The duty to 'promote success' is for the benefit of the members of the Company as a whole, and Directors must have regard to the following (& *other*) matters:



- i. the likely consequence of any decision in the long term;
- ii. the interests of the company's employees;
- iii. the need to foster the company's business relationships with suppliers, customers and others;
- iv. the impact of the company's operations on the community and the environment;
- v. the desirability of the company maintaining a reputation for high standards of business conduct; and
- vi. the need to act fairly as between the members of the company.

### **3.2 Substantial Property Transactions (Section 190 Companies Act 2006)**

If a director in his or her personal capacity is buying something from or selling something to the company, the prior consent of the members by ordinary resolution is needed if the asset being bought or sold is of the "requisite value". Any such transaction would be classed as a "substantial property transaction". Assets of value below £5,000 are not of requisite value. All transactions over £100,000 in value are of requisite value. Any assets of value between these limits will be of requisite value if they are equivalent to more than 10% of the company's net relevant assets. This provision includes other dealings with non-cash assets, for example the charging or leasing of an asset.

### **3.3 Payments for Loss of Office (Section 215 Companies Act 2006)**

Payment made to a director by way of compensation for loss of office must be disclosed to members and approved by them.

### **3.4 Disclosure of Personal Interest (Sections 177 and 182 Companies Act 2006)**

A director must disclose at a meeting of the directors any direct or indirect interest in a contract or proposed contract with the company, notwithstanding that a company's Articles permit directors to have such an interest.

### **3.5 Service Contracts (Section 188 Companies Act 2006)**

Any contract given by a director for more than five years' service must be approved by ordinary resolution of the company, failing which it is void.

### **3.6 Directors' Loans (Section 197 Companies Act 2006)**

There are detailed provisions which restrict the ability of directors, and in certain cases persons connected with the directors, from taking loans or similar arrangements from the company.

### **3.7 Liability for 'False or misleading statement in directors' reports' (Section 463 Companies Act 2006)**

The director must have known the statement was wrong, or have been reckless about it, or have been dishonest about leaving out the required information

### **3.8 Liability if the company contravenes any statutory obligation (Section 1121 Companies Act 2006)**

The offence is also committed by every officer of the company who is in default. The term ‘officer’ includes any director, manager or secretary/anyone treated as such. The term “in default” means authorises or permits, participates in, or fails to take all reasonable steps to prevent, the contravention.

Potential offences might include:

- Health & Safety - a company is responsible for ensuring health and safety of its employees/ customers “so far as is reasonably practicable”. (H&S Offences Act 2008)

Corporate Manslaughter - a single individual in the company must be guilty of manslaughter AND be the “controlling mind” of the company (Corporate Manslaughter and Corporate Homicide Act 2007)

## **4. Statutory Duties Relating to Disclosure, Reporting and Accounting**

A non-exhaustive list includes the following.

- 4.1 The terms of directors’ service contracts must be available for inspection at the Registered Office. This does not apply to contracts capable of lawful termination within twelve months.
- 4.2 Full accounts are to be produced each year and sent to all members within ten months of the accounting reference date. There are detailed requirements for the content and format of these annual accounts in Companies Act 2006. The accounts and an annual confirmation statement must be submitted to the Registrar of Companies within the time period required by the Companies Act 2006 (as amended).
- 4.3 Notification of appointment and retirement of directors must be submitted to the Registrar of Companies.

A Register of Directors will be kept at the Registered Office and will be maintained at Companies House. This must contain the following details about each director:

- name;
  - address;
  - business/occupation;
  - date of birth;
  - nationality;
  - details of other directorships.
- 4.4 The company’s notepaper must contain either the names of all directors or none of them.

## **Appendix F:        Senior Independent Director - Terms of Reference**

One of the non-Executive Directors (non-Industry members) is appointed by the Chairman to be the Senior Independent Director (SID).

The SID will act, where necessary, as a sounding board for the Chairman, providing support for the Chairman in the delivery of his or her objectives, and leading the evaluation of the Chairman on behalf of the other directors.

The SID will also act as an intermediary for other directors as and when necessary to convey views to the Chairman. He/she will chair an annual session of the Non-Executive members to review the Chairman's performance. The SID will be available to other non-executives (and key stakeholders such as Ofcom) to address any concerns or issues they feel have not been adequately dealt with through usual channels of communication. The SID will chair the Nomination Committee when it is considering succession to the role of Chairman.

### **Term of Office:**

The SID's term of office runs concurrently with their general term of office as set out in the Board Handbook. All other terms and conditions are as set out in the Board Code of Conduct Handbook.

## Appendix G: Powers of the Board

The powers of the Board, which may not be delegated to sub-Committee or to any officer or employee of the Company, are set out below.

1. Ensuring that high standards of corporate governance are observed at all times, and determining the policies underpinning Phone-paid Services Authority's risk management framework (the detail scrutiny of which is delegated to the ARCGC). As part of annual corporate governance practice providing and demonstrating sound and authentic Leadership.
2. Establishing the overall strategic direction and approval of Phone-paid Services Authority's strategy and policy plans, and determining priorities and supporting procedures for implementing its strategy and policy plans (further to recommendations and final approval by Ofcom, as set out in the MoU with Ofcom).
3. Ensuring that the Board operates within the limits of its statutory authority and in accordance with any other conditions relating to the use of public funds.
4. Ensuring Phone-paid Services Authority, classified by the Office of National Statistics into the public sector (central government) and being an Arms-Length Body (ALB) of DCMS, follows the standards, rules, guidance as set out and/or referenced in the framework agreement agreed with DCMS.
5. Appointment and re-appointment of Board members in accordance with the terms of the Memorandum of Understanding with Ofcom.
6. Establishing Committees to deal with certain aspects of the business of the Board, and setting and amending the terms of reference of such Committees.
7. Appointing independent persons from outside of Phone-paid Services Authority to a sit on a Code Adjudication Panel for a period of not more than 6 years (including any initial probationary period).
8. Ensuring mechanisms are in place for adjudication of suspected breaches of the Code.
9. Appointment of a Chief Executive to Phone-paid Services Authority in accordance with the terms of the MoU with Ofcom, and delegating to the Chief Executive the management of day to day operational and relationship issues.
10. At least once each year, evaluating the work and performance of Phone-paid Services Authority Board.
11. Recommending to the Company in general meeting the appointment, reappointment or removal of the auditors of the Company, save where any obligations arising from classification as a public body mean that auditors are appointed to Phone-paid Services Authority by statutory instrument
12. Final approval of recommendations to Ofcom for approval of Code changes, and of supporting consultations and associated documents, as set out in the MoU with Ofcom.

13. Final approval of the Annual Accounts of Phone-paid Services Authority.
14. Final approval of Business Plan and related budgeted expenditure levels for Phone-paid Services Authority, as set out and in accordance with the MoU with Ofcom.
15. Making decisions affecting anything outside the ordinary course of the activities of Phone-paid Services Authority.

## Appendix H: Board Member Expense Claim Form

Name: \_\_\_\_\_ Authorised By: \_\_\_\_\_

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

- PLEASE ENSURE ALL RECEIPTS ARE ATTACHED TO THIS FORM
- PLEASE PROVIDE FULL DETAILS OF THE EXPENSE INCURRED

Date	Details	Dept Code	Expense Code	NET	VAT	TOTAL	Finance Use Only P11D
TOTAL							

## **Appendix I:       The Seven Principles of Public Life**

### **Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

### **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

### **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### **Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interests.

### **Leadership**

Holders of public office should promote and support these principles by leadership and example.

*The Government endorses these Seven Principles of Public Life in "Spending Public Money: Governance and Audit Issues", Cm3179, March 1996*

## **Appendix J: Terms of Reference for Committees**

### **Resources Committee (RC) Terms of Reference**

#### **Membership**

The Resources Committee shall comprise up to three members drawn from the non-executive members and one executive member of the Board of Phone-paid Services Authority. The Chairman of Phone-paid Services Authority shall determine who, from amongst the Board will sit on the Resources Committee and shall appoint one Board member to act as Chair of the Committee, who will usually be an industry non-executive member. The Chairman may sit on the Resources Committee and may chair it also.

The Resources Committee shall be supported by the Chief Executive (as the executive Board member), the Director of Corporate Services and Operations and such other members of the Executive as is deemed necessary.

#### **Quorum**

There shall be at least two non-executive members of the Resources Committee.

#### **General Duties:**

The principal duties of the Resources Committee are as follows:

1. To consider Phone-paid Services Authority's policy on funding strategy and the adequacy of the funding arrangements.
2. To consider Phone-paid Services Authority's policy on financial matters and recommend any proposals to the Board where required.
3. To consider and approve the Phone-paid Services Authority Management Summary Reports.
4. To scrutinise long term and strategic financial planning and make recommendations as necessary to the Board on financial strategy.
5. To review HR strategy and objectives for the organisation and any development and training requirements for the Executive staff and non-Executive Board members, as required and recommend this to the Board.
6. To scrutinise the annual business plan and budget process and make recommendations to the Board and, thereafter, to Ofcom.
7. To examine and approve management accounts including resource accounts.
8. To approve substantive revisions to Phone-paid Services Authority's personnel and employment policies, as reflected in the staff handbook and elsewhere.



9. To approve the remuneration strategy and yearly pay/incentive award arrangements in so far as these are consistent with financial provision in the annual budget approved by the Board.
10. To approve with the Executive, plans for improving the overall efficiency and effectiveness of the organisation through on-going programmes of continuous improvement.
11. To review and advise the Executive on structure and related organisational design issues.
12. At least once each year, to evaluate the performance and pay of the Executive Team.
13. To evaluate the work and performance of the Committee on an annual basis.

**Specific Duties:**

14. To authorise, where appropriate, the writing off of bad debt within agreed Board policy.
15. To examine any proposals for general change in Phone-paid Services Authority's financial policy, having regard to the ARCGC responsibility for insurance matters.
16. To examine significant matters relating to the general overheads of Phone-paid Services Authority's offices including issues relating to re-location.
17. To scrutinise performance management data for all aspects of Phone-paid Services Authority's core and business plan activities.
18. To oversee arrangements and job specification for the appointment of the Chief Executive and other designated senior Executive posts as delegated by the Board.
19. To undertake an annual review of succession planning (inclusive of senior management and critical posts/risks with short and longer term mitigation).
20. To act as appellant body in relation to staffing matters, where required and appropriate.

**Frequency of meetings**

The Resources Committee shall normally meet up to 4 times a year.

**Reports of meetings**

As well as reporting to the Board, the minutes of the meeting will be circulated on a confidential basis to all Committee members, the Chief Executive, Director of Corporate Services and Operations and such other members of the Executive as is deemed necessary. No other members of staff shall have access to any confidential papers or the minutes.

## **Audit, Risk and Corporate Governance Committee (ARCGC) Terms of Reference**

### **Membership**

The ARCGC shall comprise up to three members drawn from the non-executive members and one executive member of the Board of Phone-paid Services Authority. The Chairman of Phone-paid Services Authority shall determine who, from amongst the Board, will sit on the ARCGC and shall appoint one Board member to act as Chair of the ARCGC. The Chairman of Phone-paid Services Authority will not Chair the ARCGC and may attend albeit will not ordinarily be a member of the Committee.

The ARCGC shall be supported by the Chief Executive (as the executive Board member) and the Director of Corporate Services and Operations and such other members of the Executive as is deemed necessary.

### **Quorum**

There shall be at least two non-executive members of the ARCGC.

### **Duties:**

The principal duties of the ARCGC are as follows:

1. To ensure the company complies with the legal obligations to produce the annual director's report and year-end financial statements and liaison takes place with the National Audit Office.
2. To scrutinise the draft audited accounts and make any comments or raise questions with the auditors as to the nature of the draft prior to making a recommendation to the Phone-paid Services Authority Board for the draft audited accounts approval.
3. To consider the outcome of the external audit and the issues raised in the management letter along with the Executive's response.
4. To consider the policy and adequacy of the collection arrangements of the levy.
5. To consider the adequacy of the internal financial control systems in place and receive reports from the Executive on the adequacy of compliance including;
  - the delegation of authority and review of the delegation scheme
  - whistleblowing policy
  - the function and principle of an internal audit role
6. To consider the security audit on IT systems and infrastructure.
7. To ensure compliance (in particular of PSA's processes, systems and policies) with UK and EU data protection law, and in particular the General Data Protection Regulation (GDPR); to support the Data Protection Officer in ensuring appropriate ongoing advice and training is in place.

8. To consider the organisational mechanism in place to assess and manage risk and consider and have oversight of the risk register and present it to the Board annually.
9. To review the accounting policies for the business on an agreed periodic basis.
10. To consider and agree the business continuity and disaster recovery plans for the business.
11. To review the insurance arrangements for Phone-paid Services Authority and ensure that insurances and their cover are adequate to the risks identified.
12. To monitor and regularly review the corporate governance arrangements for Phone-paid Services Authority and make recommendations to the Board on achieving best practice.
13. To evaluate the work and performance of the Committee on an annual basis.

### **Frequency of meetings**

The ARCGC shall normally meet up to 4 times a year.

### **Reports of meetings**

As well as reporting to the Board, the minutes of the meeting are circulated on a confidential basis to all of the Committee members, Chief Executive, Director of Corporate Services and Operations and such other members of the Executive as is deemed necessary. However these reports can be made open and public on request, unless the ARCGC determines otherwise.

## **Risk Assessment Committee (RAC) Terms of Reference**

### **Context**

Under the 14<sup>th</sup> Edition of the Phone-paid Services Authority Code of Practice (Code 14) prior permission requirements for high risk services have been in general transposed into Special Conditions. However, the power to impose prior permission on services has been retained in the 14<sup>th</sup> edition of the Code of Practice and as such the Risk Assessment Committee (RAC) may not be engaged on prior permission matters often.

Where there is a prior permission regime in place the Board delegates to a sub Committee of the Board RAC all prior permission applications referred by the Executive where the applicant has a relevant and recent breach history. The RAC has the power to impose a range of additional conditions to provide further consumer protections where deemed necessary. Where an assessment of such applications give rise to consideration of broader policy, the RAC may refer such policy issues to the Board.

All applications for permission in respect of categories of service requiring prior permission by virtue of paragraph 3.10.1 of the 14<sup>th</sup> Code, will be considered and approved by the RAC where:

- A provider(s) has a current and relevant breach history which was considered to be significant or higher as held on the Registration Scheme<sup>5</sup>;
- Named individuals/organisations are seeking prior permission after their prohibition and/or bar has being lifted (N.B. this excludes bars which were relating to non-payment of fines);
- The provider(s) has/have had a relevant prior permission certificate revoked;
- A trial period that has been imposed has expired.

### **Membership**

The RAC shall consist of:

- 3 persons drawn from the Phone-paid Services Authority Board who are not industry Board members.

### **Quorum**

At least two members of the RAC shall consider and reach a decision on each case referred to it by the Executive.

### **Duties:**

The principal duties of the RAC in relation to the prior permission regime are as follows:

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<sup>5</sup> All breaches upheld against a provider that are assessed as 'serious' and 'very serious' will be held on the Registration Scheme for 3 years and for 5 years respectively. Relevance of breach history to the prior permission being sought will be determined by the Executive.

1. To consider and approve or reject applications referred to the RAC from the Executive where a provider(s) has a current and relevant breach history which was considered to be significant or higher.
2. To apply additional conditions within its remit where applicable.
3. To refer matters of policy arising to the Board.
4. To grant, where appropriate, the power for the Executive to approve other higher risk applications within the parameters agreed by the RAC.
5. To evaluate its work and performance on a frequency agreed by the RAC.

### **Reporting:**

All activity of the RAC will be reported to the Board as part of the regular management accounts summary report paper. Any referrals by the RAC of policy to the Board will form separate policy papers for consideration.

### **Frequency of meetings**

The RAC Committee shall meet as required on an ad hoc basis where the Executive believes an application has a recent and relevant risk profile and therefore falls within the mandate of the RAC. The members of the RAC and the Executive will agree a meeting time and forum which may be either face to face, by conference call or by email.

### **Powers of the RAC**

The RAC may require the following in respect of providers considered to have a relevant and recent risk profile when considering applications for prior permission:

- the provider to seek and implement compliance advice on some or all promotional material associated with the service before the service(s) can operate.
- the Executive to undertake monitoring of services at defined time frames, for an agreed period, to ensure they are operating compliantly.
- that monitoring takes place, monthly, bi-monthly or quarterly.
- permission to be granted subject to an agreed trial period after which the service to be reviewed again by the RAC or the Executive (if designated).
- any additional information to be required to be reviewed on a regular basis by either the Executive or the RAC, including, but not limited to:
  - complaint information
  - average spend per consumer
  - evidence of repeat use
- application of additional general conditions that are service specific, currently fall within the requirements of the Code and do not require a change in policy.

## Appendix K: Personal Data and Confidential Information Policy

### Why a Policy?

Phone-paid Services Authority needs to protect itself and others against the accidental or unauthorised misuse or disclosure of information relating to or acquired during its regulatory and corporate activities, for the following reasons:

1. To prevent confidential information of all types and personal and sensitive data, generated or acquired by it, from falling into the wrong hands and being misused.
2. Unauthorised use of such information could cause financial or reputational loss to itself or others; or could cause loss, harm or anxiety to those whose personal data it stores.
3. Unauthorised use of such information may also prejudice Phone-paid Services Authority's regulatory functions, and its ability to encourage service and information providers to answer fully and candidly any complaints by consumers as the qualities of their services.

### To whom does the policy apply?

Employees, Board and CAP Members of Phone-paid Services Authority are bound by this Policy.

All suppliers of services to Phone-paid Services Authority are bound by terms and conditions that are consistent with this policy, as are contract counterparties who enter into non-disclosure agreements with Phone-paid Services Authority.

### What is our policy relating to personal data?

We will treat personal data as confidential, and will:

- ensure that it is collected, processed and stored fairly and lawfully;
- protect the rights of data subjects relating to the use of such data;
- ensure that data is kept safe and free from unauthorised access;
- provide appropriate training to data gatherers and processors;
- not collect *sensitive* personal data without the express consent of the person to whom it relates.

'Personal data' is any data (i.e. information that is processed, recorded & stored) which identifies directly/indirectly living individual, or expresses an opinion about the individual and affects that person's personal/family/business/ professional privacy.

'Sensitive personal data' means personal data consisting of information relating to a person's racial/ethnic origin; political/religious beliefs; TU membership; physical or mental health or condition; sexual life; criminal convictions.

### What is our policy relating to confidential information?

In relation to confidential information, we will:

- respect the commercial confidence of information supplied to Phone-paid Services Authority;
- keep confidential information free from unauthorised access, and ensure that it is appropriately handled, used and disposed of;
- put in place restrictions on accessing documents other than through office computers;
- monitor the electronic transfer of documents from our offices;
- refer for prosecution any unauthorised use of confidential information that is illegal (e.g. insider dealing; fraud);
- ensure *highly sensitive* information is handled only by trained persons with a need to use it, and is protected by passwords and strict access rights.

We define confidential information to include the following, but this is not an exhaustive list:

*'financial information; business plans; marketing plans; market-sensitive information; trade secrets, technical information and know-how; personal and personal contact or financial data; software source and object code; recordings of private telephone conversations; supplier and other commercial contracts;*

*in relation to Phone-paid Services Authority, confidential information also includes its unpublished strategies, board papers, policy documents, data generated during investigations, complaints received, and applications for permission.'*

We similarly define 'highly sensitive information' to include:

*'credit card numbers; bank account numbers; passwords and logins; personal health information; market-sensitive information; information which, if put in the public domain by Phone-paid Services Authority, would or might undermine trust in it, damage its reputation, or result in any adverse liability attaching to it.'*

### **When can data be shared?**

Data held by Phone-paid Services Authority will be shared with data subjects on request, and with the consent of the data subject, to organisations seeking a reference on the subject. Data is shared with suppliers of Phone-paid Services Authority who need to process such data to fulfil their obligations to Phone-paid Services Authority and who confirm they will comply with the statutory Data Protection Principles.

Phone-paid Services Authority will treat as a serious disciplinary offence any unauthorised access by its employees to, or disclosure of, personal or sensitive personal data, the loss of which would invade the privacy of a data subject, otherwise than in accordance with this policy.

### **When can confidential information be disclosed?**

Confidential information can be disclosed to third parties when it is already lawfully in the public domain or has become lawfully available from a third party free from any confidentiality restriction.

Confidential information may also be disclosed in response to a request from a regulator or other lawful authority, or shared with law enforcement agencies for the purposes of investigating fraud or other criminal offences.

Breaches of confidentiality will be treated as a disciplinary matter. Confidential information received as part of an investigation that is exploited for insider dealing of publicly quoted companies is an offence under the Criminal Justice Act 1993 s52.

### **Freedom of Information (FOI)**

Phone-paid Services Authority is not currently subject to FOI legislation but, in accordance with good practice for public bodies, has issued a publication statement on its website detailing the information and documents that are freely available to the public.



## Appendix L: EU General Data Protection Regulation (effective May 2018)

Regulation (EU) 2016/679 (the 'General Data Protection Regulation' or 'GDPR') was adopted by the European Parliament and Council on 27 April 2016, replacing Directive 95/46/EC (the objectives of which had been left to Member States to implement and transpose into national law). Its aim was to strengthen citizen's fundamental rights in the digital age and facilitate business by simplifying rules and enhancing consistency for companies in the Digital Single Market. Its aim was to remove the current fragmentation and costly administrative burdens applied in different Member states and thereby achieve significant savings for businesses of around €2.3 billion a year<sup>6</sup>.

Whilst the GDPR is now in force it will take effect on 25<sup>th</sup> May 2018 to allow Member States to put implementing measures in place. The Regulation is directly effective meaning that, unless specifically provided for, Member States are not required to transpose its provisions into national law as they automatically and directly apply to each Member State. In terms of Brexit, the UK Government has confirmed that it will adopt the GDPR notwithstanding the UK's decision to leave the EU.

As the UK 'supervisory authority' for the purposes of the GDPR the ICO has published various information and guidance for Data Controllers and Processors to assist with preparation for and compliance with the GDPR<sup>7</sup>.

### What has changed from previous rules?

#### *Data Controllers and processors*

1. The Data Protection principles (as reflected in the UK's Data Protection Act 1998) are largely preserved. These currently are that personal data is:
  - used fairly and lawfully
  - used for limited, specifically stated purposes
  - used in a way that is adequate, relevant and not excessive
  - accurate
  - kept for no longer than is absolutely necessary
  - handled according to people's data protection rights
  - kept safe and secure
  - not transferred outside the European Economic Area without adequate protection

### GDPR Principles

The principles have been made more precise and strict in the GDPR. Personal data must be:

- used lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency')<sup>8</sup>;
- collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; ('purpose limitation');

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<sup>6</sup> [http://ec.europa.eu/justice/data-protection/reform/index\\_en.htm](http://ec.europa.eu/justice/data-protection/reform/index_en.htm)

<sup>7</sup> <https://ico.org.uk/for-organisations/data-protection-reform/overview-of-the-gdpr/>

<sup>8</sup> Consent as a lawful basis for processing has been tightened up in the GDPR, including ensuring the ease of withdrawal.

- adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');
  - accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate are erased or rectified without delay ('accuracy');
  - kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; ('storage limitation')
2. A new principle of **accountability** has been introduced. This is that data controllers must be able to demonstrate compliance with the above principles.
  3. A new requirement for data protection by design and default, e.g. data minimisation. Implementation of appropriate technical and organisational measures, e.g. *pseudonymisation*<sup>9</sup> designed to implement principles.
  4. A new requirement for certain organisations to designate Data Protection Officers (DPOs) responsible for compliance (this is mandatory for public authorities).
  5. A requirement to carry out privacy impact assessments (PIA) prior to high risk processing.
  6. Data processors now have direct obligations and are liable for sanctions and legal action.
  7. Enhanced sanctions – fines: supervisory authorities can now impose fines for some infringements of up to the **higher of 4% of annual worldwide turnover and EUR20 million** (e.g. breach of requirements relating to international transfers or the basic principles for processing, such as conditions for consent). Other stated breaches can attract a fine of up to the **higher of 2% of annual worldwide turnover and EUR10m**.
  8. Requirement for more detailed fair processing notices.
  9. Breaches now to be notified to the supervisory authority without undue delay and within 72 hours unless breach unlikely to result in risk to rights and freedoms of data subject.

### *Individuals*

1. The GDPR provides individuals with strengthened rights:
  - To have specific information about processing of his/her personal data (including automated decisions and profiling).
  - Right to rectification of inaccurate data.
  - Right to be forgotten (erasure of data where, e.g. consent withdrawn, unlawful processing has taken place, or no other ground) and obligation for relevant third parties to be informed of request for erasure.
  - Restriction of processing in certain circumstances
  - Right to object to processing of data in certain circumstances
  - Right to data portability (receipt of data in a structured and commonly used format so that it can be easily transferred to another data controller).
  - To receive requested information within a month (although extension possible up to 2 further months where necessary).
2. Breach notification to data subjects where breach likely to result in high risk to rights and freedoms of data subject.
3. Individuals now have a right to an effective legal remedy either against the supervisory authority (where complaint not handled or not kept informed) or against a controller or processor (where an individual's rights are considered infringed) and a right to compensation for damage suffered as a result of an infringement of the Regulations.

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<sup>9</sup> Pseudonymisation is a new concept where processing is done in a way that the data can no longer be attributed to a data subject without additional information (that identifies a person) which is kept separately and under technical and organisational security measures. Pseudonymised data is still personal data but is encouraged to help ensure that GDPR security obligations and privacy by design are satisfied. This should not be confused with anonymous data (information that does not relate to an identifiable person or has in whole been rendered anonymous such that a person is not identifiable), which sits outside the GDPR.

4. Right to complain to own supervisory authority re cross-border processing matters. The GDPR requires establishment of a lead authority where a controller is based that can either deal with issue or let it be handled by the supervisory authority that received the complaint.

### **Data Protection Officer**

Public authorities are required to designate a Data Protection Officer (DPO). DPOs have specific tasks under the GDPR, which are to:

- Inform and advise controllers and their employees of their obligations under the GDPR;
- Monitor compliance with the Regulation, other Union or MS DP provisions and DP policies of the controller; assign DP related responsibilities, raise DP awareness and carry out staff training and audits;
- Advise on data protection impact assessments and monitor performance;
- Cooperate with the supervisory authority;
- Act as the contact point for the supervisory authority on processing issues and carry out consultations with the supervisory authority where required.

The GDPR requires that the DPO has expert DP knowledge and ability to perform the tasks, operates independently in the performance of his/her tasks and prohibits penalisation or dismissal for such performance. The DPO is required to report to the highest management level of the controller. The DPO must be supported by the controller in the performance of the tasks and provided with necessary resources. The DPO can also have other tasks and duties.

The PSA DPO reports to the Audit, Risk and Corporate Governance Committee for data protection compliance matters and to the General Counsel for other legal duties and support.

PSA will carry out any Privacy Impact Assessments advised by the DPO.

### **PSA and external support**

Both the DPO and the Executive will have access to Fieldfisher (PSA's external lawyers) where required for specialist or further legal support.